U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

(b)(6)

U.S. Citizenship and Immigration Services

DATE: JAN 23 2015 OFFICE: TEXAS SERVICE CENTER

IN RE: Petitioner:
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at http://www.uscis.gov/forms for the latest information on fee, filing location, and other requirements.** *See also* 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the employment-based immigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. We will dismiss the appeal.

The petitioner seeks classification under section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as a member of the professions holding an advanced degree. The petitioner seeks employment as a research economist for affiliated with The petitioner asserts that an exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States. The director found that the petitioner qualifies for classification as a member of the professions holding an advanced degree, but that the petitioner has not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

On appeal, the petitioner submits a short statement, asserting that the director erred in denying the petition because the petitioner has more citations to his published work than others who have received the national interest waiver.

I. Law

Section 203(b) of the Act states, in pertinent part:

> (2) Aliens Who Are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability. –
>
> > (A) In General. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
> >
> > (B) Waiver of Job Offer –
> >
> > > (i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

The director did not dispute that the petitioner qualifies as a member of the professions holding an advanced degree. The sole issue in contention is whether the petitioner has established that a waiver of the job offer requirement, and thus a labor certification, is in the national interest.

Neither the statute nor the pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of "in the national interest." The Committee on the Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

Supplementary information to regulations implementing the Immigration Act of 1990, Pub. L. 101-649, 104 Stat. 4978 (Nov. 29, 1990), published at 56 Fed. Reg. 60897, 60900 (Nov. 29, 1991), states:

> The Service [now U.S. Citizenship and Immigration Services (USCIS)] believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the "prospective national benefit" [required of aliens seeking to qualify as "exceptional."] The burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

In re New York State Dep't of Transportation, 22 I&N Dec. 215, 217-18 (Act. Assoc. Comm'r 1998) (*NYSDOT*), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, a petitioner must establish that the alien seeks employment in an area of substantial intrinsic merit. *Id.* at 217. Next, a petitioner must establish that the proposed benefit will be national in scope. *Id.* Finally, the petitioner seeking the waiver must establish that the alien will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications. *Id.* at 217-18.

While the national interest waiver hinges on prospective national benefit, the petitioner must establish that the alien's past record justifies projections of future benefit to the national interest. *Id.* at 219. The petitioner's assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The term "prospective" is included here to require future contributions by the alien, rather than to facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative. *Id.*

The regulation at 8 C.F.R. § 204.5(k)(2) defines "exceptional ability" as "a degree of expertise significantly above that ordinarily encountered" in a given area of endeavor. By statute, aliens of exceptional ability are generally subject to the job offer/labor certification requirement; they are not exempt by virtue of their exceptional ability. Therefore, whether a given alien seeks classification as an alien of exceptional ability, or as a member of the professions holding an advanced degree, that alien cannot qualify for a waiver just by demonstrating a degree of expertise significantly above that ordinarily encountered in his or her field of expertise.

II. Analysis

The petitioner filed the Form I-140, Immigrant Petition for Alien Worker, on June 24, 2013. An accompanying introductory statement reads, in part:

- [THE PETITIONER] IS AN INTERNATIONALLY-CITED RESEARCHER, already cited in numerous peer reviewed articles by researchers in Europe, North America, and South America as well as by researchers at the US Department of Agriculture and the International Food Policy Research Institute
- Due to his success, [the petitioner] has been called upon to serve as a Peer Reviewer
- [The petitioner's] case is **supported by a winner of the**
- Burden of Proof is only "PREPONDERANCE OF THE EVIDENCE."

. . . [The petitioner] has extensive research experience in the nationally crucial field of agricultural economics research, specifically in international agricultural trade and agricultural risk management. As noted in the attached exhibits, his research has impacts not only on our country's agricultural industry, but also on America's transportation and fuel industries. . . .

As evidence of the influence of his work, [the petitioner's] research has already been cited in numerous peer-reviewed articles by researchers in Europe, North America, and South America as well as by researchers at the US Department of Agriculture and the International Food Policy Research Institute. . . . [The AAO previously approved a national interest waiver petition for] a researcher with a comparable number of citations as [the petitioner]. . . .

The latest project which has been working on is the development of the federal crop insurance program for sugar beets for energy biofuels. [The petitioner] is currently the lead researcher in this project.

(Emphasis in original.) The initial submission included the claim that the petitioner's peer review work "is . . . evidence of the fact that he is consider[ed] to be a true leader in this field." The petitioner submitted no documentary evidence from journal publishers to show that his participation in peer review demonstrates that "he is consider[ed] to be a true leader in this field." The submitted evidence regarding the petitioner's peer review work consists of printouts of two electronic mail messages. An October 23, 2010 message from an editor of reminded the petitioner that the due date of a review was approaching. A January 25, 2012 message from an editor of invited the petitioner to review a manuscript for that publication. The 2012 message began: "In view of your expertise I would be very grateful if you could review the following manuscript." The term "expertise," in the sense of subject matter knowledge, does not imply, and is not synonymous with, being "a true leader in [a given] field." The 2012 message indicated that the petitioner could "decline the assignment" if he did "not feel

qualified." The petitioner's initial submission did not show whether he accepted or declined the assignment.

The introductory statement included the claim that "[i]n recognition of [the petitioner's] outstanding work, he has been admitted into the and the Research Forum, all internationally known and respected scientific organizations that require outstanding achievements of their members. (See Exhibit 7)." Exhibit 7 is the petitioner's résumé. This document is not evidence that those organizations require such achievements, nor is it evidence of the petitioner's membership in the organizations. It is, rather, a claim of such membership, with no mention of membership requirements. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)).

The petitioner submitted copies of three award certificates:

- A "Certificate of Recognition" from the "For writing an honorable mention
- The ' from the Research Forum; and
- The ' from the Research Forum.

Evidence of recognition for achievements and significant contributions to the industry or field by peers, governmental entities, or professional or business organizations can form part of a claim of exceptional ability under 8 C.F.R. § 204.5(k)(3)(ii)(F). Exceptional ability, in turn, does not ensure approval of the national interest waiver. The petitioner has not established the significance of his three awards, all of which he received while he was a graduate student.

The petitioner submitted a copy of an AAO appellate decision from 2005, approving a petition for another researcher. The 2005 decision included the following passage: "the documentation submitted on appeal reflects that one of the petitioner's articles had been cited 12 times by independent researchers as of the date of filing and a second article had been cited by four independent researchers as of the date of filing." To support the claim that he has "a comparable number of citations," the petitioner submitted a printout from the Google Scholar search engine, showing that nine of his articles and conference papers have received an aggregate total of 19 citations since 2007. The total number of citations is comparable to the 2005 decision, but the petitioner arrived at that total through lesser citation of a higher number of papers. The most-cited piece, a conference presentation entitled had earned four citations since its 2007 publication. Furthermore, the petitioner identified only a fraction of the citing articles, and therefore he did not establish that all 19 of his documented citations were independent rather than self-citations.

Six letters accompanied the petitioner's initial submission. Dr. is a professor at where the petitioner earned his two graduate degrees, and head of its Department of Agricultural Economics. Dr. asserted that the petitioner "conducted advanced and highly effective agricultural and applied economics research for numerous projects," which "was extremely helpful for a number of scientists in our organization and area of work." Dr. provided details regarding several of the petitioner's graduate projects, including the following:

> While studying for his Masters, his thesis was fundamental in aiding the United States soybean industry by evaluating transportation improvements in Brazil and how these improvements would impact our nation's oilseed exporting industry. . . .
>
> Surprisingly, the results of his work demonstrated that proposed transportation improvements he analyzed would actually yield modest losses to the United States soybean industry. . . . His state of the art model assessed and indicated important considerations in the aspect of how U.S. producers should move in enhancing their exporting competitiveness. . . .
>
> Another important contribution of [the petitioner's] work was his study of how the impacts the world cotton trade, with more detailed analysis on the impacts of the U.S. cotton industry. . . .
>
> In general, all scenarios suggested by [the petitioner's] work indicated that cotton exports to ports would increase considerably with the port of leading the way. On the other hand, the ports would decrease [their] participation in total U.S. cotton exports significantly.

With regard to the petitioner's subsequent work for Dr. stated:

> The latest project which has been working on is the development of the federal crop insurance program for sugar beets for energy biofuels. [The petitioner] is currently the lead researcher on this project.
>
> . . . Currently, existing crop insurance programs do not insure sugar beets for energy which is a different variety from the beet used for sugar production.

Dr. a professor at and a member of the on which shared the described the petitioner's projects in graduate school and afterwards in language similar to that found in Dr. letter.

Dr. another professor at stated: "Overall, [the petitioner] was one of the best graduate researchers I have known," and that the petitioner has created "an impressive body of novel research activity," but Dr. did not provide any details about the petitioner's work at

Dr. asserted that the petitioner "is currently working on a series of extremely challenging projects," but described only one of those projects, specifically "the development of the federal crop insurance program for sugar beets used for energy biofuels."

Dr. , professor at the stated:

> [A]lthough I tried to recruit [the petitioner] to our program here in Georgia, I have never worked or collaborated with [the petitioner]. My knowledge of his research is based on his publications, conference presentations, and awards. . . .
>
> [The petitioner] has proven himself to be among the most creative and insightful researchers in the field of agricultural and applied economics.

Dr. then discussed the petitioner's work on the sugar beet crop insurance project described above. In addition to using language similar to portions of Dr. letter, Dr. asserted that the petitioner's "participation in the development of the crop insurance program for sugar beets for energy will be fundamental towards efforts geared at attaining our nation's security goals."

Dr. professor at stated that he has met the petitioner at conferences but has not worked with him. Dr. deemed the petitioner to be "clearly among the best" researchers who are studying "the impact of the on the U.S. cotton exporting industry."

All of the above letters discussing the petitioner's work on sugar beet crop insurance discussed the potential of sugar beets as a biofuel source, but provided no details about the petitioner's work on insuring the crop except to state that the petitioner is the lead researcher on the project.
president of stated:

> [The petitioner] is currently serving as the lead researcher in our firm for the development of insurance programs for bio-energy crops targeting fuel markets as a petroleum substitute/additive. . . . [The petitioner's] research will contribute to the expansion of risk management mechanisms available to the American biofuel industry.
>
> [The petitioner] is also currently spearheading the development of multiple crop insurance programs to areas currently underserved by the industry, particularly in the fresh fruit and vegetable sectors. . . . [The petitioner's] analytical capabilities are a fundamental component of our organization's capacity to develop and provide risk management mechanisms for this underserved sector.
>
> . . . He possesses expertise in time series and structural econometric analysis in addition to quadratic programming and simulation analysis. Each of these skills is important in our field of research and in the risk management industry.

The director issued a request for evidence (RFE) on August 5, 2013. The director determined that the petitioner had met the first two prongs of the *NYSDOT* national interest test concerning intrinsic merit and national scope, but had not satisfied the third prong with evidence of the impact of his work. The director discussed the petitioner's awards and quoted from selected witness letters, but concluded that the petitioner had not established influence on his field. In forming this conclusion, the director found that no one paper by the petitioner showed heavy or frequent citation. The director also found that the petitioner had failed to support claims regarding the significance of his two documented instances of peer review work and the membership requirements of the associations named above.

In response, the petitioner submitted a statement disputing, but not refuting, some of the director's determinations. For instance, the statement indicates that the petitioner "has served as a peer reviewer many times," although the petitioner has documented only two such instances. The petitioner submitted additional evidence regarding his peer review work, most of which relates to the two instances documented previously. These materials concern the peer review process that was already underway, and do not show why or how the petitioner was selected as a peer reviewer. Materials relating to peer review of a third manuscript show that Dr. [redacted] was the designated reviewer for that manuscript. Dr. [redacted] added a notation that he had the petitioner read the paper as well. Thus, in this third instance, it was not the publishers or editors, but one of the petitioner's own professors, who invited him to help with the peer review of the paper.

The third paper dealt with '[redacted]' In his notes, Dr. [redacted] stated: "[the petitioner,] an ag econ phd student from that area in Brazil looked at this [manuscript]." This identification of the petitioner suggests two things: first, Dr. [redacted] did not presume that the editors would recognize the petitioner's name; and second, he chose to involve the petitioner because he is "from that area in Brazil" and therefore familiar with the subject matter.

Much of the RFE response statement, and several accompanying supporting exhibits, dealt with the general premise that the United States should revise its immigration laws in order to be more accommodating to highly skilled workers. The authority to reform basic immigration laws rests with Congress, not with USCIS.

The petitioner submitted updated information, showing that the total number of citations of his work had increased by two, from 19 to 21, spread over ten papers. His most-cited paper had five citations; seven of 17 identified papers showed no citations. The petitioner offered no evidence to show how this cumulative citation rate, with an average of roughly 1.24 citations per paper, ranks in his field.

The petitioner submitted a printout showing that one of his articles has been downloaded 1,970 times since May 2008. The printout did not distinguish unique downloads from repeat downloads, and because the petitioner presented the data in isolation, there is no means to compare this figure to those for other articles published in the petitioner's specialty.

The petitioner submitted letters from the Research Forum, stating that each meeting includes "100-125 research paper presentations." The statement submitted with the RFE response contended that "each of [the petitioner's] ' . is strong evidence that even when compared to other highly-skilled researchers . . . , [the petitioner's] expertise places him among the very best." The petitioner did not demonstrate how Forum attendees compare with the field as a whole, and therefore the assertion that they represent an elevated standard is unfounded. Furthermore, the petitioner received only one from the Research Forum; the other award was a more narrowly focused ' " chosen not from among all "100-125 research paper presentations," but from that unquantified subset of papers dealing with agricultural and rural transportation. The awards are not evidence that the petitioner's work has had an impact beyond those individual conferences.

The petitioner submitted new letters from three of the individuals who had previously provided letters with the initial submission. Dr. stated:

> Quite frankly, knowing of [the petitioner's] level of success I find the issuance of an RFE to be quite surprising. . . .
>
> By any real-world standard, [the petitioner] is among the most productive top researchers in our field. Evidence of this is the fact that his publications have already been cited many times. . . . [The petitioner's] citations and downloads underscore the fact that he is among the most effective researchers in our field.

Dr. stated that the petitioner "has been so successful that his work has already been cited by scientists more than thirty times, and his impact continues to increase. Given that citations are the hallmark of a researcher's impact, it is clear evidence that he has generated contributions of major significance that have been widely recognized in our field."

Mr. claimed that "very few researchers in the field of agricultural economics are as widely cited or have worked on such advanced projects as [the petitioner] for this point in his career."

All three of these individuals claimed that the petitioner's citation record distinguishes him in his field. Dr. for example, claimed that the petitioner's "number of citations easily surpasses a large majority of his professional peers." This is not a matter of opinion, subject to expert evaluation, but rather a claim regarding objective and verifiable facts. Nevertheless, the petitioner did not submit any citation figures for other researchers to support the above claims. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)).

Furthermore, the petitioner's own evidence placed the number of citations at 21 at the time, rather than "more than thirty" as Dr. claimed, a discrepancy that would affect how the petitioner ranks in terms of overall citation histories. Citation of published work provides a relatively objective

way to measure a given researcher's impact, but this does not invariably establish or imply that a citation history "is clear evidence that [one] has generated contributions of major significance that have been widely recognized in [one's] field."

The new letters also indicated that current immigration policy does not do enough to ensure that talented researchers remain in the United States. Nevertheless, USCIS adjudicators are bound by existing law and policy and do not have the discretion or authority to disregard that law or policy.

The director denied the petition on June 30, 2014, stating that the petitioner had not satisfied the third prong of the *NYSDOT* national interest test. The director described the submitted evidence and quoted from several of the submitted letters, and found that the letters contained uncorroborated claims regarding the significance of the petitioner's published work and his citation record. The director also stated that the petitioner's general arguments about the importance of immigration reform do not establish the petitioner's individual eligibility for the benefit sought.

On Part 3, line 1 of Form I-290B, Notice of Appeal or Motion, the petitioner checked box "c," indicating: "No supplemental brief and/or additional evidence will be submitted." Therefore, the one-page statement submitted with the appeal form constitutes the entire appeal. The substantive portion of that statement reads:

> In its decision the Texas Service Center failed to properly apply the criteria promulgated by the landmark New York State Department of Transportation (NYSDOT) case. Due to its failure to properly apply the NYSDOT criteria the Texas Service Center erroneously denied a strong NIW case submitted by a PhD researcher whose number of citations exceeds that of other petitioners who[se] cases have been approved. . . .
>
> The letter, the spirit, and the Public Policy that are the basis of the National Interest Waiver (NIW) all support an approval of [the petitioner's] Form I-140 petition.

The submitted statement did not allege any specific error in the director's decision, except to assert that USCIS has approved waivers for researchers with fewer citations than the petitioner. The 2005 appellate decision reproduced in the record advised that unpublished decisions, such as the 2005 decision itself, have no precedential weight or authority. The regulation at 8 C.F.R. § 103.3(c) gives such authority only to decisions published and designated as precedent decisions. The 2005 decision is not binding on USCIS employees in other proceedings such as the matter presently at hand. The 2005 decision included no finding that the existence of 16 or more independent citations should invariably result in the approval of a given petition. Rather, that decision rested on a number of factors apart from the number of citations. The petitioner, however, did not claim any direct parallels with the 2005 case except for the citation numbers.

III. Conclusion

The petitioner has not established a past record of achievement at a level that would justify a waiver of the job offer requirement. The petitioner need not demonstrate notoriety on the scale of national acclaim, but the national interest waiver contemplates that his influence be national in scope. *NYSDOT*, 22 I&N Dec. at 217, n.3. More specifically, the petitioner "must clearly present a significant benefit to the field of endeavor." *Id.* at 218. *See also id.* at 219, n.6 (the alien must have "a past history of demonstrable achievement with some degree of influence on the field as a whole").

As is clear from the statute, it was not the intent of Congress that every person qualified to engage in a profession in the United States should be exempt from the requirement of a job offer based on national interest. Likewise, it does not appear to have been the intent of Congress to grant national interest waivers on the basis of the overall importance of a given profession, rather than on the merits of the individual alien. On the basis of the evidence submitted, the petitioner has not established that a waiver of the requirement of an approved labor certification will be in the national interest of the United States.

We will dismiss the appeal for the above stated reasons. In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, the petitioner has not met that burden.

ORDER: The appeal is dismissed.